

INVITATION FOR BID (IFB)

Bid Event Number: EVT0002161

Document Number: IFB0000363

Replaces Contract: New

Date Mailed: March 14, 2013

Closing Date: April 11, 2013, 2:00 PM

Procurement Officer: Tami Sherley
Telephone: 785-296-3122
E-Mail Address: tami.sherley@da.ks.gov
Web Address: <http://da.ks.gov/purch>

Item: STD Prevention Products

Agency: 26400 – Kansas Department of Health and Environment

Period of Contract: One (1) year from Date of Award
(with the option to renew for five (5) additional one (1) year periods)

Guarantee: No Monetary Guarantee Required

Scope: This Contract shall cover the procurement of STD Prevention Products for the 26400 – Kansas Department of Health and Environment during the contract period referenced above.

Event Number EVT0002161 was recently posted to Procurement and Contracts Internet website.
The document can be downloaded by going to the following website:

<http://www.da.ks.gov/purch/RFQ/>

It shall be the vendor's responsibility to monitor this website on a regular basis for any changes/addenda.

SIGNATURE SHEET**Item:** STD Prevention Products**Agency:** Kansas Department of Health and Environment**Closing Date:** April 11, 2013

By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request and that all exceptions are clearly identified.

Legal Name of Person, Firm or Corporation_____

Mailing Address_____ City & State_____ Zip _____

Toll Free Telephone_____ Local_____ Cell: _____ Fax_____

Tax Number_____

CAUTION: If your tax number is the same as your Social Security Number (SSN), you must leave this line blank. **DO NOT** enter your SSN on this signature sheet. If your SSN is required to process a contract award, including any tax clearance requirements, you will be contacted by an authorized representative of the Division of Purchases at a later date.

E-Mail _____

Signature_____ Date_____

Typed Name _____ Title_____

In the event the **contact for the bidding process** is different from above, indicate contact information below.

Bidding Process Contact Name_____

Mailing Address_____ City & State_____ Zip _____

Toll Free Telephone_____ Local_____ Cell: _____ Fax_____

E-Mail_____

If **awarded a contract and purchase orders** are to be directed to an address other than above, indicate mailing address and telephone number below.

Award Contact Name_____

Mailing Address_____ City & State_____ Zip _____

Toll Free Telephone_____ Local_____ Cell: _____ Fax_____

E-Mail_____

SECTION I CONDITIONS TO BIDDING

1. **Bid Event ID / Reference Number:** The Bid Event ID / IFB Number has been assigned to this IFB and MUST be shown on all correspondence or other documents associated with this IFB and MUST be referred to in all verbal communications. All inquiries, written or verbal, shall be directed to the procurement officer only.

Tami Sherley

Telephone: 785-296-3122

Facsimile: 785-296-7240

E-Mail Address: tami.sherley@da.ks.gov

Kansas Department of Administration

Procurement and Contracts

800 SW Jackson, Suite 600

Topeka, KS 66612-1216

2. **Questions/Addenda:** No pre-bid conference is scheduled for this IFB. Questions requesting clarification of the IFB must be submitted in WRITING to the Procurement Officer by noon on March 21, 2013 to the following address:

Tami Sherley

Telephone: 785-296-3122

Facsimile: 785-296-7240

E-Mail Address: tami.sherley@da.ks.gov

Kansas Department of Administration

Procurement and Contracts

800 SW Jackson, Suite 600

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Failure to notify the Procurement Officer of any conflicts or ambiguities in this IFB may result in items being resolved in the best interest of the State. Any modification to this IFB shall be made in writing by addendum and mailed to all vendors who received the original request. Only written communications are binding.

3. **Cost of Preparing Bid Response:** The cost of developing and submitting the bid response is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the bid response, submitting the bid response, and other costs associated with this IFB. All responses will become the property of the State of Kansas and will be a matter of public record subsequent to signing of the contract or rejection of all bids.
4. **Evaluation of Bids:** Award shall be to the lowest responsible bidder taking into consideration conformity with the specifications, terms of delivery and other conditions imposed by this IFB. Award will be by line item, group totals, or total lot, whichever is in the best interest of the State of Kansas.
5. **Acceptance or Rejection:** The State of Kansas reserves the right to accept or reject any or all bid responses or part of a bid response; to waive any informalities or technicalities; clarify any ambiguities in bid responses; modify any criteria in this IFB; and unless otherwise specified, to accept any item in a bid response.
6. **Contract:** The successful bidder will be required to enter into a written contract with the State. The bidder agrees to accept the provisions of form DA 146a, Contractual Provisions Attachment, which is incorporated into all contracts with the State and is incorporated into this IFB.
7. **Contract Documents:** This IFB and any amendments and the bid response and any amendments of the successful bidder shall be incorporated along with the DA 146a into the written contract award which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

1. Form DA 146a;
 2. written modifications to the executed contract;
 3. written contract signed by the parties;
 4. the IFB including any and all addenda; and
 5. contractor's written response submitted in response to the IFB as finalized.
8. **Contract Formation:** No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered; and a written contract has been signed by the successful bidder.
9. **Open Records Act (K.S.A. 45-215 et seq.):** All bid responses become the property of the State of Kansas. Kansas law requires all information contained in bid responses to become open for public review once a contract is signed or all bid responses are rejected.
10. **Federal, State and Local Taxes Governmental Entity:** Unless otherwise specified, the bid response price shall include all applicable federal, state and local taxes. The successful bidder shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with the IFB. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's prices.
11. **Debarment of State Contractors:** Any contractor who defaults on delivery as defined in this IFB may, be barred (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the secretary of administration, after consultation with the contracting agency and the attorney general, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period exceeding three years. The secretary, after consultation with the contracting agency and the attorney general, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment under subsection (b), in which case the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person.
12. **Insurance:** The State shall not be required to purchase any insurance against loss or damage to any personal property nor shall the State establish a "self insurance" fund to protect against any loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the vendor shall bear the risk of any loss or damage to any personal property.

SECTION II BID INSTRUCTIONS

1. **Preparation of Bid Response:** Prices are to be entered in spaces provided herein. Computations and totals shall be indicated where required. The State has the right to rely on any price quotes provided by bidders. The vendor shall be responsible for any mathematical errors in pricing. The State reserves the right to reject bid responses which contain errors.

Bidders are instructed to prepare their Bid Response following the same sequence as the IFB.

2. **Submission of Bid Responses:** Vendor's bid response shall consist of:
 - Event Details document, including Signature of an authorized Bidder Representative
 - Two (2) copies of the bid response, including literature and other supporting documents;
 - In addition one (1) electronic version of the bid response may be required prior to award.

Vendor's bid response, sealed securely in an envelope or other container, shall be received promptly at 2:00 p.m., Central Standard or Daylight Savings Time, whichever is in effect, on April 11, 2013, addressed as follows:

Kansas Department of Administration
Procurement and Contracts
Bid Event ID: EVT0002161
Closing: April 11, 2013
800 SW Jackson Street, Suite 600
Topeka, KS 66612 1216

It is the bidder's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

Faxed, e-mailed or telephoned responses are not acceptable unless otherwise specified.

Responses received prior to the closing date shall be kept secured and sealed until closing. The State shall not be responsible for the premature opening of a bid event response or for the rejection of a bid event response that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Bid Response will be retained unopened in the file and not receive consideration, or will be returned at bidder's expense.

3. **Signature of Responses:** Each bid event response shall give the complete mailing address of the vendor and be signed by an authorized representative by original signature with his or her name and legal title.
4. **Acknowledgment of Addenda:** All vendors shall acknowledge receipt of any addenda to this IFB. Failure to acknowledge receipt of any addenda may render the bid response to be non-responsive. Changes to this Solicitation and the resulting contract shall be issued only by Procurement and Contracts in writing.
5. **Modification of Bid Responses:** A bidder may modify an IFB response by letter or by FAX transmission at any time prior to the Finishing Time for IFB.
6. **Withdrawal of Bid Responses:** A bid response may be withdrawn on written request from the vendor to the Procurement Officer at Procurement and Contracts prior to the Finishing Time.
7. **Bid Disclosures:** At the Finishing Date and Time, bid prices shall be made public information. Interested vendors or their representatives may be present at the announcement at the following location:

Kansas Department of Administration
800 Jackson Street, Suite 600
Topeka, KS 66612 1216

Bid results will not be given to individuals over the telephone. Results may be obtained after contract finalization by obtaining a bid tabulation from Procurement and Contracts. Bid results can be obtained by sending (do not include with bid response):

1. A check for \$3.00, payable to the State of Kansas and
2. A self -addressed, stamped envelope;
3. Invitation For Bid Number,

Send to:

Kansas Department of Administration
Procurement and Contracts
Attention: Bid Results/Copies
800 SW Jackson, Suite 600
Topeka, KS 66612 1216

Copies of individual bid responses may be obtained under the Kansas Open Records Act by calling 785- 296-0002 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the bid file. Upon receipt of the funds, the documents will be mailed. Information in bid files shall not be released until a contract has been executed or all bid responses have been rejected.

8. **Notice of Award:** An award is made on execution of the written contract by all parties. Only the State is authorized to issue news releases relating to this IFB , its evaluation, award and/or performance of the contract. Procurement and Contracts shall issue either a purchase order or a written contract to the successful bidder.

SECTION III GENERAL PROVISIONS

1. **Term of Contract:** The term of this contract is for a one (1) year period from the date of award with five (5) additional one (1) year renewal(s) by written agreement of the parties.
2. **Inspection:** The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of this IFB.
3. **Termination for Cause:** The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
 - the Contractor fails to make delivery of goods or services as specified in this contract; or
 - the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchases shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

4. **Termination for Convenience:** The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.
5. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Tami Sherley

Kansas Department of Administration
Procurement and Contracts
800 SW Jackson St, Suite 600
Topeka, KS 66612-1216

or to any other persons or addresses as may be designated by notice from one party to the other.

6. **Rights and Remedies:** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

In the event of termination, the Contractor shall receive payment pro rated for that portion of the contract period services were provided to and/or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

7. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes, etc.

8. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.
9. **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

10. **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract may result in termination of this contract and/or damages.

11. **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

12. **Confidentiality:** The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by contractor. On the termination of expiration of this contract, contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.

13. **Reviews and Hearings:** The Contractor agrees to advise the Director of Purchases of all complaints of recipients made known to the Contractor and refer all appeals or fair hearing requests to the Director of Purchases. The State has the discretion to require the Contractor to participate in any review, appeal, fair hearing or litigation involving issues related to this contract.

14. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules and regulations may result in termination of this contract.

15. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.

16. **Hold Harmless:** The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to

recover against third parties for any loss, destruction or damage to State property.

17. **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.
18. **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
19. **Retention of Records:** Unless the State specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be at no cost to the state.

Federal, State and Local Taxes Contractor: The State make no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

20. **Antitrust:** If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.
21. **Modification:** This contract shall be modified only by the written agreement of the parties with the approval of the Director of Purchases. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
22. **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State.

This contract may terminate in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.
23. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
24. **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
25. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
26. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas.
27. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.
28. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA 146a) which is

attached are incorporated by reference and made a part of this contract.

29. **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.
30. **State Credit Card:** Presently, many State Agencies use a Business Procurement Card (Visa) in lieu of a state warrant to pay for some of its purchases. No additional charges will be allowed for using the card. Please indicate on the Signature Sheet if you will accept the Business Procurement Card for payment.
31. **Criminal Or Civil Offense Of An Individual Or Entity That Controls A Company Or Organization Or Will Perform Work Under This Contract:** Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
32. **Competition:** The purpose of this Solicitation is to seek competition. The vendor shall advise Procurement and Contracts if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the Procurement and Contracts no later than five (5) business days prior to the bid closing date. The Director of Purchases reserves the right to waive minor deviations in the specifications which do not hinder the intent of this Solicitation.
33. **Political Subdivisions:** Political Subdivisions (City, County, School Districts and etc.) are permitted to utilize contracts administered by Procurement and Contracts. Please indicate on the accompanying Event Details document one of the following statements:
- (1) "This pricing IS available to Political Subdivisions of the State of Kansas";
or
(2) "This pricing IS NOT available to Political Subdivisions of the State of Kansas".
- Awards shall not be based on which of these statements is selected. However, conditions included in this contract shall be the same for political subdivisions.
- The State has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision.
34. **Injunctions:** Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, vendor shall not be entitled to make or assert claim for damage by reason of said delay.
35. **Acceptance:** No contract provision or use of items by the State shall constitute acceptance or relieve the vendor of liability in respect to any expressed or implied warranties.
36. **Breach:** Waiver or any breach of any contract term or condition shall not be deemed a waiver of any prior or subsequent breach. No contract term or condition shall be held to be waived, modified, or deleted except by a written instrument signed by the parties thereto.
- If any contract term or condition or application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition or application. To this end the contract terms and conditions are severable.
37. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the

application of either party the contract shall be amended to make such insertion or correction.

38. **New Materials, Supplies or Equipment:** Unless otherwise specified, all materials, supplies or equipment offered by a vendor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

39. **Payment Terms:** Unless specified otherwise, Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the vendor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

The statute further defines the date goods or services are received as the date such goods or services are completely delivered and finally accepted by the state agency. The date the payment is made by the state agency is defined as the date on which the warrant or check for such payment is dated, i.e. warrant issue date.

40. **Disclosure of Proposal Content:** The laws of the State of Kansas require public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. No proposals shall be disclosed until after a Contract Award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a Contract Award is withdrawn, or otherwise in the normal course of business.

Trade secrets or proprietary information legally recognized as such and protected by law may be withheld if they are clearly labeled "Proprietary" in the margin of each individual page where they appear in the proposal response package. Pricing information is normally not considered proprietary. The Vendor's entire proposal response package shall not be considered proprietary.

41. **Worker Misclassification:** The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

SECTION IV SPECIAL PROVISIONS

1. **Bid Response Format:** Bidders are instructed to prepare their Bid Response following the same sequence as the sections of the IFB.
2. **Subcontractors:** The contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.
3. **Qualifications:** A description of the bidder's qualifications and experience providing the requested or similar service including resumes of personnel assigned to the project stating their education and work experience. The bidder must be an established firm recognized for its capacity to perform. The bidder must be capable of mobilizing sufficient personnel to meet the deadlines specified in this solicitation.
4. **Payment:** Payment shall be made after receipt of goods or services in agreement with Kansas Law. Payments shall not be made for costs or items not listed in the bidder's response.
5. **Invoices:** Each purchase order must be individually invoiced. Invoices shall be forwarded to the using agency in duplicate and shall state the following:
 1. date of invoice.
 2. date of shipment (or completion of work);
 3. purchase order number and contract number;
 4. itemization of all applicable charges; and
 5. net amount due.
6. **Contract Price:** Statewide contracts are awarded by Procurement and Contracts to take advantage of volume discount pricing for goods and services that have a recurring demand from one or more agencies. However, if a state agency locates a vendor that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by Procurement and Contracts.
7. **Submission of the Bid Response:** Submission of the bid response will be considered presumptive evidence that the vendor is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the bid response for all contingencies. Later claims for labor, work, materials, and equipment required for any difficulties encountered which could have foreseen will not be recognized and all such difficulties shall be properly taken care of by Contractor at no additional cost to the State of Kansas.
8. **Insurance:** The Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to Procurement and Contracts.
9. **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this solicitation, within the time specified, in accordance with the provisions as specified.
10. **Shipping and F.O.B. Point:** Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ADDED (pricing shall NOT include shipping expense), which means delivered to a state agency's receiving dock or other designated point. Shipping information shall be provided at the time orders are placed and shall be indicated as a separate line item on all invoices. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during regular working hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.
11. **Deliveries:** All orders shall be shipped FOB destination, prepaid and added, within fourteen (14) business days of receipt of a purchase order. Deliveries must be clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the ordering agency of the revised delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall inform Procurement and Contracts of any supply or delivery problems. Continued delivery problems may result in termination of the contract.

12. **Equivalent Items:** Whenever a material, article or piece of equipment is identified in the specifications by reference to a manufacturer's or vendor's name, trade name, catalog number, etc., it is intended to establish a standard, unless otherwise specifically stated. Any material, article or equipment of other manufacturers or vendors shall perform to the standard of the item specified. Equivalent bids must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, shall be returned at bidder's expense, if requested.
13. **Alternate Items:** Bids on items comparable to the above are invited. Bidders should submit complete specifications, descriptive materials and indicate any deviation from the specifications of this solicitation.
14. **Implied Requirements:** All products and services not specifically mentioned in this IFB, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the bid response.
15. **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.
16. **Default on Delivery:** Any contractor who defaults on delivery as defined in this Contract may, be barred from bidding on any subsequent bid event for a period to be determined.
17. **Indefinite Quantity Contract:** This Solicitation is for an open-ended contract between a vendor and the State to furnish an undetermined quantity of a good or service in a given period of time. An estimated quantity based on past history or other means may be used as a guide.
18. **Prices:** Prices shall remain firm for the entire contract period. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract.
19. **Unit Pricing:** Each item required by the bid must be individually priced (i.e. priced per single unit) and be able to be ordered individually.
20. **Certification of Specifications Compliance:** By submission of a response and the signatures affixed thereto, the bidder certifies all products and services proposed in the IFB meet or exceed all requirements of this specification as set forth in the IFB.
21. **Certification of Materials Submitted:** The response to this IFB, together with the specifications set forth herein and all data submitted by the bidder to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful bidder and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.
22. **Experience:** All bidders must have a minimum of three (3) years continuous active participation in the applicable industry as a distinct company, providing equipment and systems comparable in size and complexity to the equipment and systems specified.

Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract.

Such information may include, but not be limited to, a list of similar size and type projects the Bidder has completed.
23. **Award:** Award will be by line item or group total, whichever is in the best interest of the State of Kansas. Additionally, the State reserves the right to award to a single vendor or multiple vendors in the best interest of the State of Kansas.

SECTION V STATEMENT OF WORK

The Kansas Department of Health and Environment (KDHE) Bureau of Disease Control and Prevention is issuing this Invitation for Bid to establish a catalog based contract with one or more vendors for the purchase of products that promote safer sex practices and prevent Sexually Transmitted Diseases (STDs).

KDHE estimates that \$60,000.00 will be spent on these types of products alone in SFY 2013. The estimate is provided for informational purposes only and is to be used only as a guide. Quantities to be purchased under this contract are indefinite.

PRODUCTS TO BE PROVIDED

The Contractor shall offer items including, but not limited to, male condoms, dental dams, female condoms and lubricants as well as safer sex educational materials. Safer sex educational materials shall include (but are not limited to) condom compacts, condom demonstrators, and educational brochures on HIV/AIDS and other STDs.

The contractor shall provide a catalog with their bid response of safer sex materials **including but not limited to the following brands** for each type of item listed. The brands listed represent at a minimum, the product brands that the successful contractor shall provide.

Condoms: Atlas, Beyond Seven, Caution Wear, Contempo, CR, Crown, Durex, Fantasy, Global Colors, Impulse, Jimmie Hatz, Kameleon, Kimono, LifeStyles, Lucky Boy, Night Light, ONE, RIA Wrangler, Rough Rider, Sensis, Sweetheart, Trojan, Trustex, Ultra Shape

Contractor must have condoms available to purchase by the case in quantities of 500 to approximately 1,000 condoms per case.

Dental Dams: Hot Dam, Sheer Glyde, Trustex

Contractor must have dental dams available to purchase by the box in quantities of 100 dental dams per box.

Female Condoms: FC2 Female Condom

Contractor must have female condoms available to purchase either by the bag or case in quantities of 100 per bag or 1,000 per case.

Lubricants: Aqua Lube, Astroglide, Durex, Elbox Grease, I-D, LifeStyles, Rain, Slippery Stuff, WET

Contractor must have lubricants available to purchase by the case in quantities of 500 to approximately 1,000 lubricant packets per case.

Bid Form

See Attachment A – Pricing Schedule

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.